

REMARKS

I. PRELIMINARY REMARKS

This paper is presented in response to the final official action dated January 21, 2010, in which claims 51-53 and 71-87 were rejected. Claims 51-70, 76, 84, and 85 are pending; claims 54-70 have been withdrawn. The specification and claims 51 and 76 have been amended. Claims 71-75, 77-83, 86, and 87 have been canceled.

Claim 51 has been amended to include the feature of now-canceled claim 71. Claim 52 has been amended to conform to amended claim 51. Claim 76 has been amended to depend from claim 51.

The present invention is directed to the discovery that a composition including constituents of blueberry, bilberry, cranberry, elderberry, raspberry, and strawberry provides a composition with unexpected, greater-than-additive antioxidant values.

II. OUTSTANDING REJECTIONS

Claims 71, 75, 79, and 83 have been objected to as being of improper dependent form.

Claims 51-53 and 71-87 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 51-53, 72-74, 84, and 85 have been rejected under 35 U.S.C. § 103(a) as being obvious over Bomser et al. *Planta Med.* 62(3):212-6 (1996) (“Bomser”), Wedge et al. *J. Med. Food* 4(1):49-51 (2001) (“Wedge”), Dufour et al. French Publication No. 2789269 (“Dufour”), Liu et al. *J. Agric. Food Chem.* 50:2926-2930 (2002) (“Liu”), Xue et al. *Carcinogenesis* 22(2):351-356 (2001) (“Xue”), and Kandil et al. *J. Agric. Food Chem.* 50:1063-1069 (2002) (“Kandil”) in view of Prior et al. *J. Agric. Food Chem.* 46:2686-2693 (1998) (“Prior I”), Wang et al. *J. Agric. Food Chem.* 44:701-705 (1996) (“Wang”), and Prior et al. *J. AOAC Intl.* 83(4):950-956 (2000) (“Prior II”).

Claims 76-78, 80-82, 86, and 87 have been rejected under 35 U.S.C. § 103(a) as being obvious over Bomser, Wedge, Dufour, Liu, Xue, and Kandil in view of Prior I, Wang, and Prior II and further in view of Moyer et al. *J. Agric. Food Chem.* 50:519-525 (2002) (“Moyer”).

III. PATENTABILITY ARGUMENTS

A. The objection of claims 71, 75, 79, and 83 should be withdrawn

Claims 71, 75, 79, and 83 have been canceled. Therefore, the objection is moot.

B. The rejections under 35 U.S.C. § 112, second paragraph, should be withdrawn

The rejection of claims 51-53 and 71-87 should be withdrawn because the independent claims have been amended. Independent claim 51 has been amended to remove the noted language. Claim 52 has been amended to recite that the composition has a higher oxygen radical absorbance capacity than an oxygen radical absorbance capacity of any one berry constituent in the composition. Claim 76 has been amended to depend from claim 51 and to clarify that the composition has a higher antioxidant capacity than an antioxidant capacity of any one berry constituent in the composition. Therefore, claims 52 and 76 refer to comparisons of the individual berry constituent to the composition.

C. The rejections under 35 U.S.C. § 103(a) over the cited references should be withdrawn

The obviousness rejections over the cited art should be withdrawn because the art does not disclose or suggest the unexpected synergistic antioxidant values associated with the claimed composition. Specifically, the claimed composition provides a significant increase in antioxidant value compared to the (additive) antioxidant value that would be expected for the claimed composition.

“Evidence of a greater than expected result may also be shown by demonstrating an effect which is greater than the sum of each of the effects taken separately (i.e., demonstrating ‘synergism’).” MPEP § 716.02(a), Part I. The claimed composition demonstrates unexpected, synergistic results as shown by the declaration of inventor Dr. Debasis Bagchi enclosed as Exhibit “A.” Enclosed as Exhibit “B” is an article detailing the individual oxygen radical absorbance capacity (ORAC) for each berry constituent recited in the claim. As noted in the attached declaration, the claimed composition exhibits an ORAC value of 41 Trolox equivalents per gram fresh weight (TE/g), which is a significant and unexpected increase over the expected, or additive, ORAC value of approximately 36 TE/g.

Therefore, the claimed composition demonstrates unexpected, synergistic results and the obviousness rejections should be withdrawn. Such action is respectfully requested.

CONCLUSION

For the foregoing reasons, it is submitted that each of claims 51-53, 76, 84, and 85 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, she is invited to contact the undersigned attorney at the number below.

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Respectfully submitted,

By Pooja Van Dyck
Pooja Van Dyck

Registration No.: 64,806
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Willis Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicant